Comment on Recent Cases

ACT TO REGULATE COMMERCE: LONG AND SHORT HAUL CLAUSE: JUDICIAL REVIEW OF ORDERS OF INTERSTATE COMMERCE COMMISSION.—The United States Supreme Court has held in numerous cases that the Interstate Commerce Commission has virtually irreviewable discretion in administering the Act to Regulate Commerce within the limits fixed by the constitution and the statutes.[1] In the Intermountain Rate Cases, (United States v. Atchison, Topeka & Santa Fe Railway Company),[2] it was ruled that the 1910 amendment to the fourth section of the act (long and short haul clause)[3] transferred from the carriers the primary function of determining whether lower rates might be made for longer than for shorter hauls, displacing the mere reviewing power previously reposed in the Commission. It was further pointed out that the authority conferred upon the Commission to prescribe the extent to which relief from the restraints of section 4 might be given, comprehends the authority to fix the relationship between the rates to the more distant and the intermediate points. In the case of *United States v. Merchants' and Manufacturers' Traffic Association of Sacramento et al.*[4] the Supreme Court finds it necessary to reapply these principles, and in so doing reverses the decision of the District Court of the United States for the Northern District of California.[5]

In the Spokane[6] and Reno[7] cases, the Interstate Commerce Commission granted relief from the restraints of the long and short haul clause on west-bound transcontinental traffic, but attached as a condition to that relief a requirement that rates to intermediate points, such as Reno and Spokane, should not exceed

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[1] Baltimore & Ohio R. R. Co. v. U. S. (1910), 215 U. S. 481, 495, 54 L. Ed. 292, 297, 30 Sup. Ct. Rep. 164; Interstate Commerce Commission v. Delaware, L & W. R. R. Co. (1911), 220 U. S. 235, 251, 55 L. Ed. 448, 456, 31 Sup. Ct. Rep. 392; Interstate Commerce Commission v. U. P. R. R. Co. (1912), 222 U. S. 541, 547, 56 L. Ed. 308, 311, 32 Sup. Ct. Rep. 108; Interstate Commerce Commission v. Louisville & N. R. R. Co. (1913), 227 U. S. 88, 92, 57 L. Ed. 431, 433, 33 Sup. Ct. Rep. 185; Atchison, T., & S. F. Ry Co. v. U. S. (1914), 232 U. S. 199, 221, 58 L. Ed. 568, 34 Sup. Ct. Rep. 291; Los Angeles Switching Case (Interstate Commerce Commission v. Atchison, T., & S. F. Ry Co.) (1914), 234 U. S. 294, 58 L. Ed. 1319, 34 Ct. Rep. 814. See 3 California Law Review, 50.

[2] (1914), 234 U. S. 476, 58 L. Ed. 1408, 34 Ct. Rep. 986. See 2 California Law Review, 491.

[3] 36 Stats. at L. 539, 547, amending section 4 of the Act to Regulate Commerce (24 Stats. at L. 380, 104).

[4] (Dec. 4, 1916), 242 U. S. 178, 37 Sup. Ct. Rep. 24.

[5] Merchants' & Manufacturers' Traffic Association of Sacramento v. U. S. (1915), 231 Fed. 292.

[6] City of Spokane v. Northern Pac. Ry. Co. (1911), 21 I. C. C. 400.

[7] R. R. Commission of Nevada v. S. P. Co. (1911), 21 I. C. C. 329.

by more than certain fixed percentages the rates concurrently in effect to Pacific Coast terminals. The validity of the Commission's action was attacked by the carriers but sustained by the Supreme Court in the Intermountain Rate Cases.[8] Immediately following the decision vindicating the Commission's authority, the carriers made application for a modification of the initial order, with a view to securing additional relief made necessary by the intensified competition of water carriers operating through the Panama Canal. After due hearing certain additional relief was granted by the Commission,[9] which, however, so restricted its grant as to allow a full measure of relief only as to rates to ports of call. A lesser measure of relief was permitted as to rates to intermediate points not directly served by the water lines. The necessary effect of this order was to eliminate from the list of Pacific Coast terminals enjoying water-compelled rates one hundred and eighty-five "interior terminals" which had been upon a parity with the water terminals proper. The commercial interests of Sacramento, Stockton, San Jose, and Santa Clara, which were among the cities thus deprived of the rate advantages which they had previously enjoyed, challenged the Commission's order upon the ground that it was not responsive to the application filed by the carriers under section 4, and therefore, represented an excess of jurisdiction. The lower federal court sustained this contention, holding that the relief granted be immediately responsive to that applied for, and that, inasmuch as the carriers had sought authority to maintain lower rates to all points then known as terminals than to intermediate points, the Commission could not competently restrict the relief granted to a limited number of the points involved and thereby impel the establishment of higher rates to the remainder. The Supreme Court, in reversing the District Court, points out that the broad discretion enjoyed by the Commission would be rendered nugatory if the courts were permitted so narrowly to construe the Commission's authority.

It would seem clear that the Commission is not restricted to the mere alternatives of approving or disapproving applications for relief under section 4 in the form in which they are presented. The express grant of power to prescribe the extent of relief in specified cases comprehends the power to grant relief as to certain points and deny it as to others, and to impose such conditions as administrative discretion may suggest. The circumstance that a readjustment of rates not contemplated by the carriers' application may result from the Commission's order does not go to the question of power.

J. L. K.

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[8] Supra, n. 2.

[9] Commodity Rates to Pacific Coast Terminals and Intermediate Points (1915), 32 I. C. C. 611, 34 I. C. C. 13.

[10] Supra, n. 5.